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UNITED STATES DISTRICT COURT
SOUTHER DISTRICT OF NEW YORK

RAMI BALY, petitioner

-against-

AFFIDAVIT IN SUPPORT
OF MOTION FOR LEAVE TO REARGUE
22-CV-5812

CHIEF JUSTICE
LUARA TAYLOR SWAINE/respondent

I, RAMI BALY, file Prose (U.S.C. 28 Title 1654)) being duly sworn declare under penalty of perjury that the following facts are true and correct: make this affidavit in support of the motion to reargue a decision and order in a dismissal of Order to Amend.

In response to a dismissal in request of certificate of appealability, of an 'Order to Amend', to recharacterize, habeas corpus under 28 U.S.C. 2254, petitioner RAMI BALY, claims the submission of his case was damaged which administration failed to serve papers timely to the order, injuring the conclusion of the 2254 petition as a dismissal.

Introduction

This motion is a Notice of Appeal of the dismissal, in relief of a reconsideration to hear BALY'S, recharacterization for 'certification of appealability' to be granted being requisite to file, habeas to contest a 2017 conviction, 22-CV-5812, which BALY'S remedies are exhausted at the state level. The appeal shows cause to how the damages of serving papers, damaged the District Chief Judge, LUARA TAYLOR SWAINE request

of BALY's, recharacterize injuring the ability to be granted certificate of appealability under 2254 habeas corpus under the jurisdiction of Federal Courts, which; the District Courts have jurisdiction to request a Supreme Court justice to petition a lower court under a habeas statute.

The motion should be rewarded to BALY, because, it is held in good faith being that, in order to appeal to the United States Court of Appeals, for the Second Circuit, that, the party must show excusable neglect or good cause, for ability to file the notices of appeal by the deadline.

1.

BALY did submit the motion for 2254(a) Habeas during the 30 day, statute of limitations period. Therefore, that the papers were incorrectly served or possibly tampered on behalf of the courts administration, this is a neglect of services. The 30 day period ended on Aug 9th, 2022, which BALY dropped the Amended order for recharacterization at the Supreme Court of New York, Prose intake unit, in person in an envelop along with a filled out 2254 form, which stated the reason for the request, with legal theory supporting the allegations, and the relief sought. The District Judge SWAINE dismissed the case on Sept 12th, and sent the letter to BALY on Sept 14th, 2022, in statement that, one, BALY never submitted the 2254 order which, grants that the dismissal was based upon... further adding that forma pauperis under 28 U.C.S. 1915(a)(3) was not granted.

2.

The actions taken against BALY was out of neglect based on the sufficient clear and convincing evidence that, the inability to file the notice was on behalf of the Court administrations misappiction of duty, to locate the file.

3.

In BALY's, 28 U.S.C. 2254 habeas, BALY, shows cause along with the requested ration which supported by legal theory sufficient to the orders request. BALY'S Certificate of Appealability, to grant Habeas review, meets the requirements, being that the case contest a malicious prosecution which led to an unlawful conviction, and false arrest, which are both discretionary questions within the jurisdiction, being that they touch of questions of constitutional law.

Under the 14th Amendment, all Citizens are to receive equal treatment to the law, due process clause. BALY'S argument is valid and meets their requirements to be heard. The requested recharacterization to BALY, shows clear and convincing evidence, to how habeas applies to his case, along with supporting legal theory.

The request of reconsideration is held in good faith, being that the information of provides, under Rule 56, motion for summary judgment, that neglect was to the cause which, negligence of papers not being properly to be reviewed, damaged the case by neglecting the argument to be the conclusion instead of the dismissal. The injury in turn, damages BALY'S statute of limitations, to respond to the requested order of LAURA TAYLOR SWAINE'S Order to Amend, as recharacterization under 2254, within 30 Days.

On Sept 14th, Chief Judge SWAINE, submitted papers by the mail, to serve BALY the notice of dismissal which BALY never received. After arriving to the courts to search for the case, on Nov 3rd, 2022, BALY dismissal notice was located in the Clerks, file and catalogs. As a result of the actions, it is clear and convincing evidence that BALY'S dismissal was based upon neglect of insufficient court services to receive served

papers and to serve papers. This is what led SWAINE to dismiss BALY'S case, claiming that BALY will not be granted Forma Pauperis 28 U.S.C. 1915(a)(3) for the Certificate of appeal.

Conclusion

As a relief, BALY request to appeal and vacate the dismissal, and enter a reconsideration of the 2254 habeas argument, and further correction to appeal perfect over the issue. The motion to reconsider should be granted. The argument is held in good faith, it shows that Rule 56 is met by presenting clear and convincing evidence that, both; neglect of court services, and good cause, is met. Being that the jurisdiction of the matter, this case is held in good faith, in request of appeal. 409 who may appeal judgment in Art 78 proceedings Under the Civil Practice Law and Rules, an aggrieved party or a person substituted for him or her may appeal from any appealable judgment or order except one entered upon the default of the aggrieved party. An intervenor may appeal from a judgment in an Art. 78 Proceeding.

The failure of a petitioner to appeal to the appellate division from an order dismissing his or her petition on the merits constitutes a forfeiture of the right to litigate the dismissal on the merit, notwithstanding that the respondent appealed from that part of the order which granted the petitioner leave to apply anew.

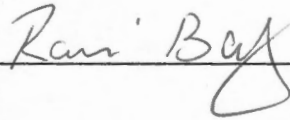
Determining a motion to dismiss the courts must satisfy that, There is no trial uses of fact, for if there is, it should not summarily dispose of the proceeding on motion. For example, if the question of the application is the statute of limitations, raises an issue of fact, the issue should be determined on a formal hearing rather than on motion papers.

Nonetheless, when the dispositive facts and position of the parties are fully set forth in the record, thereby making it clear that no dispute as to the facts exist and that no prejudice will result for the filer to require an answer, the court may rehear the merits of the petition in an art 78 proceedings and grant the petitioner judgment thereon notwithstanding the lack of any answer and without giving the respondent a further opportunity to answer the petition.

WHEREFORE, I request that the court grant reargument.

Dated: , 14th November, 2022

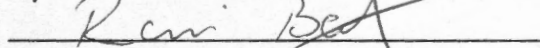
The County of New York

A handwritten signature in cursive script, appearing to read "Rami Bey", is written over a horizontal line.

(SIGNATURE OF PERSON MAKING
APPLICATION - BEFORE A NOTARY PUBLIC)

Sworn to before me this

day of Noyemeber 14th, 2022

A handwritten signature in cursive script, appearing to read "Rami Bey", is written over a horizontal line.

NOTARY PUBLIC: STATE OF NEW YORK



REQUEST FOR JUDICIAL INTERVENTION

SUPREME COURT, COUNTY OF _____

Index No: _____ Date Index Issued: _____

For Court Use Only:

CAPTION Enter the complete case caption. Do not use et al or et ano. If more space is needed, attach a caption rider sheet.

RAMI BALY

Plaintiff(s)/Petitioner(s)

IAS Entry Date

Judge Assigned

RIJ Filed Date

-against-

Chief Judge United States District Court SDNY
LAURA TAYLOR SWAINE

Defendant(s)/Respondent(s)

NATURE OF ACTION OR PROCEEDING Check only one box and specify where indicated.

COMMERCIAL

- ☐ Business Entity (includes corporations, partnerships, LLCs, LLPs, etc.)
☐ Contract
☐ Insurance (where insurance company is a party, except arbitration)
☐ UCC (includes sales and negotiable instruments)
☐ Other Commercial (specify): _____
NOTE: For Commercial Division assignment requests pursuant to 22 NYCRR 202.70(d), complete and attach the COMMERCIAL DIVISION RIJ ADDENDUM (UCS-840C).

TORTS

- ☐ Asbestos
☐ Child Victims Act
☐ Environmental (specify): _____
☐ Medical, Dental or Podiatric Malpractice
☐ Motor Vehicle
☐ Products Liability (specify): _____
☐ Other Negligence (specify): _____
☐ Other Professional Malpractice (specify): _____
☐ Other Tort (specify): _____

SPECIAL PROCEEDINGS

- ☐ Child-Parent Security Act (specify): ☐ Assisted Reproduction ☐ Surrogacy Agreement
☐ CPLR Article 75 – Arbitration [see **NOTE** in **COMMERCIAL** section]
☒ CPLR Article 78 – Proceeding against a Body or Officer
☐ Election Law
☐ Extreme Risk Protection Order
☐ MHL Article 9.60 – Kendra's Law
☐ MHL Article 10 – Sex Offender Confinement (specify): ☐ Initial ☐ Review
☐ MHL Article 81 (Guardianship)
☐ Other Mental Hygiene (specify): _____
☐ Other Special Proceeding (specify): _____

MATRIMONIAL

- ☐ Contested
NOTE: If there are children under the age of 18, complete and attach the MATRIMONIAL RIJ ADDENDUM (UCS-840M).
For Uncontested Matrimonial actions, use the Uncontested Divorce RIJ (UD-13).

REAL PROPERTY Specify how many properties the application includes: _____

- ☐ Condemnation
☐ Mortgage Foreclosure (specify): ☐ Residential ☐ Commercial
 Property Address: _____
NOTE: For Mortgage Foreclosure actions involving a one to four-family, owner-occupied residential property or owner-occupied condominium, complete and attach the FORECLOSURE RIJ ADDENDUM (UCS-840F).
☐ Partition
NOTE: Complete and attach the PARTITION RIJ ADDENDUM (UCS-840P).
☐ Tax Certiorari (specify): Section: _____ Block: _____ Lot: _____
☐ Tax Foreclosure
☐ Other Real Property (specify): _____

OTHER MATTERS

- ☐ Certificate of Incorporation/Dissolution [see **NOTE** in **COMMERCIAL** section]
☐ Emergency Medical Treatment
☐ Habeas Corpus
☐ Local Court Appeal
☐ Mechanic's Lien
☐ Name Change/Sex Designation Change
☐ Pistol Permit Revocation Hearing
☐ Sale or Finance of Religious/Not-for-Profit Property
☐ Other (specify): _____

STATUS OF ACTION OR PROCEEDING Answer YES or NO for every question and enter additional information where indicated.

- | | YES | NO | |
|---|-----------------------|-----------------------|------------------------------|
| Has a summons and complaint or summons with notice been filed? | <input type="radio"/> | <input type="radio"/> | If yes, date filed: _____ |
| Has a summons and complaint or summons with notice been served? | <input type="radio"/> | <input type="radio"/> | If yes, date served: _____ |
| Is this action/proceeding being filed post-judgment? | <input type="radio"/> | <input type="radio"/> | If yes, judgment date: _____ |

NATURE OF JUDICIAL INTERVENTION Check one box only and enter additional information where indicated.

- ☐ Infant's Compromise
☐ Extreme Risk Protection Order Application
☐ Note of Issue/Certificate of Readiness
☐ Notice of Medical, Dental or Podiatric Malpractice Date Issue Joined: Nov 11/2022
☒ Notice of Motion Relief Requested: reargue Return Date: _____
☒ Notice of Petition Relief Requested: for a pauper's Return Date: _____
☐ Order to Show Cause Relief Requested: habeas review Return Date: _____
☐ Other Ex Parte Application
☐ Partition Settlement Conference
☐ Poor Person Application
☐ Request for Preliminary Conference
☐ Residential Mortgage Foreclosure Settlement Conference
☒ Writ of Habeas Corpus
☐ Other (specify): motion to leave for reargue 2254 (Dismissal)

Ravi Bala
Signature
RAMU BALY
Print Name

Rami Baily (Prose)
765 Amsterdam Avenue Apt #4B
New York, NY 10025



Pro Se Intake

ATTN: Laura Swaine Chief Judge
The Daniel Patrick Moynihan
United States Courthouse
500 Pearl St.
New York, N.Y. 10007-1312

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